



# City of Adak

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## ORDINANCE No. 11-2012-072

### AN ORDINANCE AMENDING THE ADAK CODE OF ORDINANCES TO ENACT A NEW CHAPTER 4.12 ESTABLISHING A TRANSIENT LODGING TAX

#### BE IT ORDAINED AND ENACTED BY THE CITY OF ADAK:

**Section 1.** Title 4 of the Adak Code of Ordinances is amended to add a new Chapter 12, Transient Lodging Tax, to read as follows:

#### CHAPTER 4.12 TRANSIENT LODGING TAX

##### Sections:

- 4.12.005 – Definitions.
- 4.12.010 – Imposition of lodging tax.
- 4.12.015 – Exemptions.
- 4.12.016 – Exemption Procedures.
- 4.12.025 – Tax Returns and Remittance.
- 4.12.030 – Assessment limitation periods; Recordkeeping.
- 4.12.035 – Delinquency; failure to submit returns.
- 4.12.040 – Suits for collection.
- 4.12.045 – Prohibited acts.
- 4.12.050 – Violations a misdemeanor.
- 4.12.055 – Sale of business; final tax return; liability of purchaser.
- 4.12.060 – Lien for tax, interest, and penalty due.
- 4.12.065 – Foreclosure against real property.
- 4.12.070 – Written Tax Rulings.

##### 4.12.005 – Definitions.

As used in this chapter, the following words, terms and phrases shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

- A. **“Guest”**: an individual, corporation, partnership or association paying monetary or other consideration for the use of transient lodging.
- B. **“Operators”**: a person, firm, corporation or other legal entity that furnishes, offers for rent or otherwise makes available in the city any facility in which any transient lodging is offered for occupancy for compensation.
- C. **“Person”**: all persons or entities, both natural and artificial.
- D. **“Rent(s)”**: the amount paid or promised, in terms of money, as consideration for the use of a room.

- E. **“Room”**: any room, suite of rooms, facility or structure, or any part thereof, whether temporary or permanent, which is rented or offered for rent for use as a residence, dwelling, sleeping place, place of lodging or other use auxiliary to such residential, dwelling, sleeping or other lodging use and includes bed –and- breakfast operations; provided however, that “room” does not include any such room used exclusively as part of a substantially different business, such as a hospital room, patient treatment room or a dormitory room, where the primary purpose of the business is other than providing meals, lodging, adventures, entertainment or recreation.
- F. **“Transient lodging”** means rooms, offered or made available for persons for occupancy on a daily basis or longer period of time, but does not include rooms that are available only for occupancy on a permanent basis for continuous days under a written rental agreement.

#### 4.12.010 – Imposition of lodging tax.

- A. The City hereby levies a tax on rent for transient lodging equal to **five (5)** percent of the rent charged. The tax shall be applicable to all room rents where the room is available for rent on a daily basis.
- B. Each guest is responsible for the tax imposed by this chapter and the tax shall be due and payable at the time the rent is paid. The tax shall apply to all rentals where the room is available for rent on a daily basis.
- C. Every operator shall add the amount of the tax levied by this chapter to the rent and the tax shall be stated separately on any sales receipts or slips, rent receipts, charge tickets, invoices, statements of account or other tangible evidence of the rental.
- D. Every operator renting rooms subject to taxation under this chapter shall collect the taxes imposed by this chapter from the guest at the time of collection of the rent for the room.
- E. The tax imposed under this chapter shall be in addition to the sales tax imposed under Chapter 4.06. The tax imposed under this chapter shall not be levied on any sales tax levied under chapter 4.06 nor shall the tax imposed under chapter 4.06 be levied on the tax levied under this chapter.

#### 4.12.015 – Exemptions.

The following rentals are exempt from the tax imposed by this Chapter:

- A. Rentals made directly to the United States government
- B. Rentals made directly to the State of Alaska and its political subdivisions
- C. Rentals made directly to the City of Adak or any of its departments

#### 4.12.016 – Exemption Procedures.

- A. If a rental is paid directly by a governmental entity as stated in 4.12.15, no transient lodging tax will be added to the invoice.
  - a. Payments are considered to be made by a government entity utilizing the following methods: A duly authorized purchase order, government credit card or government warrant/check.
  - b. Government employees travelling on a reimbursement basis are not exempt from taxation under this chapter.

- B. An operator shall determine in the first instance whether a sale is exempt under this chapter. If an operator incorrectly determines that a sale is exempt, and fails to collect the tax from the guest, then the operator is liable to the City for the uncollected tax, plus any applicable interest and penalties.
- C. Should a dispute arise between the operator and guest as to whether or not any sale is exempt from taxation under this Chapter, the seller shall collect and the guest shall pay the tax. The operator shall issue to the guest a receipt and an application for refund form as prepared by the City Manager or the manager's designee showing the names of the seller and guest, the room rental, the date, amount of tax paid and brief statement of the claim of exemption.

#### 4.12.025 – Tax Returns and Remittance.

- A. Operators shall prepare and submit a registration form supplied by the City that will include:
  - a. Identifying Operator information
  - b. The address or location of each facility;
  - c. The number of lodging rooms in each facility operated by the operator;
  - d. Other information as required by the City
- B. Not later than **25 days** following the month of rental activity a tax return is required to be submitted. Every operator under this chapter shall deliver to the city a tax return, signed by the operator(s), on a form provided by the city, regardless of whether taxes are due for the month.
- C. Each operator shall remit the entire amount of the tax due from such operator pursuant to this chapter for the immediately preceding calendar month.
- D. A late filing penalty of \$25.00 shall be added to all late returns. The postmark shall determine the date of filing mailed returns.
- E. The tax levied under this chapter, whether or not collected from the guest, must be remitted by the operator to the city at the time of submitting the return, and if not so remitted, such tax is delinquent.
- F. A penalty equal to five percent (5%) of the delinquent tax shall be added to the tax for the first month, or any part thereof, and an additional five percent (5%) shall be added to the tax due for each month, or fraction thereof, of delinquency until a total penalty of fifteen percent (15%) of the tax due has accrued. The penalty shall be assessed and collected in the same manner as the tax is assessed and collected.
- G. In addition to the penalty provided for in subsection (F) above, interest assessed on delinquent tax shall accrue at the rate of ten and one-half percent (10.5%) per year. Interest shall accrue from the date of delinquency until paid in full and shall be collected in the same manner as the delinquent tax is collected.
- H. The operator shall report and pay the tax to the city on the same basis, cash or accrual, the seller uses for reporting federal income tax.
- I. An operator which has filed a transient lodging tax return will be presumed to be making sales in successive months unless that collector files a return showing termination or sale of the business.

#### 4.12.030 – Assessment limitation periods; Recordkeeping.

- A. The amount of any tax imposed under this chapter may be determined and assessed

for a period of six 6 years after the date the return was filed or was due to be filed with the city

- B. No civil action for the collection of such tax may be commenced after the expiration of the 6 year period except an action for taxes, penalties, and interest due for those return periods, that are the subject of a written demand or assessment made under 4.12.35 within the six-year period. Every operator shall retain for a period of six (6) years all of the sales tax returns, reports, forms, records and supporting schedules as may be necessary to determine the amount of tax required to be collected. All such records and documentation shall be made available for examination at reasonable times by the City or agents of the City, for the purpose of ascertaining the correctness of a return or for the purpose of determining the amount of tax collected or levied.
- C. The amount of any tax imposed under this Chapter may be determined and assessed at any time within a period of six (6) years after the tax became due and payable. The period shall begin on the date when a return is required to be filed. Where no tax return has been filed, or where a fraudulent return has been filed, then the period of limitation does not begin to run until discovery of the delinquency or fraud occurs. No proceeding for the collection of the tax shall begin after the expiration of this period.

4.12.035 – Delinquency; failure to submit returns.

- A. Whenever any operator has become delinquent in the submission of the required filing period return for a period of thirty (30) days, the city manager shall make a written demand by hand delivery or certified mail, return receipt requested, upon the delinquent operator for submission, within ten (10) days of the date of the demand, of the required transient lodging tax return.
- B. In the event of noncompliance with such demand, the city manager shall make a transient lodging tax assessment against the delinquent operator, the assessment to be based on an estimate of the gross taxable transient lodging rental revenue received by the operator during the filing period in question.
- C. Whenever any operator fails to submit the required filing period return after notice given as provided in subsection (A) of the section, or such return is reasonably believed by the city manager to contain incorrect reporting, the city manager may take one or more of the following actions:
  - a. Criminal action. File a criminal complaint against the operator for violation of this Chapter.
  - b. Civil action. File a civil complaint against the operator for violation of any obligation in this Chapter.
  - c. Make a tax assessment against the operator, with the assessment based upon an estimate of the gross revenue received by the collector during the period and institute civil action to recover the amount of the tax, interest, and penalty due and to request injunctive relief. The estimate of gross revenue may all be derived from past tax returns of the seller or their predecessor, the general economic level of the business community, information from tax audits conducted by the City, if available, returns of comparable businesses and any other information believed to be reliable or helpful to the City in

making an estimate of the transient lodging tax due. Notice of the estimated assessment of transient lodging taxes due shall be furnished the seller by the City via first-class mail to the last known address of the operator or via hand-delivery to the operator and the estimated assessment shall become final for the purposes of determining liability of the operator to the City after thirty(30) days of the date of mailing or hand-delivery of the estimated assessment to the operator unless the operator earlier files with the City an accurate tax return, supported by satisfactory records or documentation of sales made, indicating a lesser liability.

- d. The tax, interest and penalty imposed under this Chapter shall constitute a lien in favor of the City upon all the property of the operator. The lien arises upon delinquency and continues until the liability is satisfied or the lien is foreclosed. The lien is not valid as against a mortgagee, pledgee, purchaser or judgment lien creditor until notice of the lien is filed in the office of the recorder for the recording district. The manner provided for federal tax liens under AS40, 19.010 et seq. are by this reference incorporated herein as if set forth in full.

- D. Whenever any operator fails to submit the required filing period return after notice given as provided in subsection A of this section, the city manager may require such operator to submit returns and remit taxes on a more frequent basis.

#### 4.12.040 – Suits for collection.

Taxes due but not paid, or taxes collected but not transmitted, may be recovered in an action at law against the guest or the operator. Tax returns shall be *prima facie* proof of taxes collected but not transmitted.

#### 4.12.045 – Prohibited acts.

- A. No person may fail or refuse to pay the tax imposed by this chapter when it is due and payable to an operator authorized to collect the tax.
- B. No operator may fail or refuse to make monthly returns required by this chapter.
- C. No operator may fail or refuse to pay to the city in the manner provided in this chapter the tax imposed under this chapter.
- D. No operator may advertise or state to the public or to any guest or renter, directly or indirectly, that the tax or any part of it will be assumed or absorbed by the operator or otherwise, or that the tax will not be added to the rental, or that it will be refunded, nor may an operator absorb or fail to add the tax or any part of it or refund any tax, or fail to separately state the tax to the renter or guest.

#### 4.12.050 – Violations a misdemeanor.

Any person, firm, partnership, corporation, or other legal entity violating any of the provisions of this chapter is guilty of a misdemeanor.

#### 4.12.055 – Sale of business; final tax return; liability of purchaser.

- A. An operator who sells their business, business inventory or accounts receivable to another shall make a final tax return within 15 days after the date of sale. The purchaser of the business, business inventory, or accounts receivable shall withhold

a portion of the purchase money sufficient to pay the tax, penalties and interest that may be due until the seller displays a receipt from the City showing that all tax obligations imposed by this Chapter have been paid. If any purchaser of a business, business inventory, or accounts receivable fails to withhold this sum, the purchaser shall be personally liable for the taxes, penalties and interest owed by the seller to the City. The City may continue to make efforts to collect the tax from the person or entity who owned the business or accounts receivables at the time the liability was incurred.

- B. If an operator terminates their business without the benefit of a purchaser, successor, successors or assigns, the operator shall make a final return and settlement of tax obligations within 15 days of the termination of business.

4.12.060 – Lien for tax, interest, and penalty due.

- B. The tax, interest, and penalty imposed under this chapter shall constitute a lien in favor of the city upon all assets, earnings, revenue and property of the operator and/or guest.
- C. The lien arises upon delinquency and continues until liability for the amount is satisfied or the property of the delinquent person is sold at a transient lodging tax lien foreclosure sale.
- D. The lien is not valid as against a mortgagee, pledgee, purchaser, or judgment creditor until notice of the lien is filed in the office of the recorder for the appropriate recording district.
- E. When recorded, a lien authorized under this section has priority over all other liens except:
  - a. those for property taxes and special assessments;
  - b. all liens perfected before the recording of the transient lodging tax lien for amounts actually advanced before the recording of the transient lodging tax lien; and
  - c. Mechanics' and materialmen's liens which have been recorded before the recording of the transient lodging tax lien. Upon such filing, the transient lodging tax lien is superior to all other liens except as otherwise provided by state or federal law.

4.12.065 – Foreclosure against real property.

A lien for the tax, interest, and penalties created by this chapter may be foreclosed, when authorized by the city council, by commencement of an action in the superior court pursuant to the procedure set forth in AS 09.45.170 through 09.45.220.

4.12.070 – Written Tax Rulings.

- A. The City Manager or their designee may rule upon specific transactions upon request by an operator or purchaser. The written ruling on a specific sale may be relied upon by the parties to that sale unless essential facts were not provided to the person making the ruling or the ruling is clearly contrary to the provisions of this Code.
- B. The City Manager or their designee shall take all steps necessary and appropriate to administer this Chapter which includes the authority to enter into payment plans for

delinquent sales taxes, penalties and interest.

**Section 2.** This ordinance shall become effective immediately only upon ratification by the voters of Adak at a regular or special election.

PASSED AND APPROVED by the ADAK CITY COUNCIL this 23rd day of **September**, 2011.

Michael E. Sweeney  
Mayor

ATTEST:

Peggy Campbell  
City Clerk

Date of Introduction:	September 14, 2011
Date of First Reading:	September 14, 2011
Date of Second Reading:	September 21, 2011
Date of Public Hearing:	September 21, 2011

